

REMARKS

Claims 1-3 are pending in this application. All of the pending claims were rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter, but otherwise indicated to be allowable. None of the claims is currently amended. Reconsideration is requested.

The Office states that the claimed computer readable medium is referred to in the specification as "using," for example, baseband or broadband signaling techniques, including carrier wave signaling techniques, which are non-statutory. Applicant respectfully traverses on the grounds that the Specification does not describe the program as being a carrier wave. The specification actually states the "programs defining functions of the present invention **can be delivered to a computer** in many forms; including, but not limited to ... information conveyed to a computer through communication media for example using baseband signaling or broadband signaling techniques, including carrier wave signaling techniques, such as over computer or telephone networks via a modem." (emphasis added) Applicant believes that essentially all computer programs can be delivered to a computer via carrier wave signaling, and further that this fact does not render those programs non-statutory.

Applicant also traverses on the grounds that the Interim Guidelines do not support the rejection. The passage relied upon by the Office, page 55 of the Interim Guidelines, states:

Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a **claim reciting** a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in § 101. First, a **claimed signal** is clearly not a "process" under § 101 because it is not a series of steps. The other three § 101 classes of machine, compositions of matter and manufactures "relate to structural entities and can be grouped as 'product' claims in order to contrast them with process claims." 1 D. Chisum, Patents § 1.02 (1994). The three product classes have traditionally required physical structure or material.

"The term machine includes every mechanical device or combination of mechanical device or combination of mechanical powers and devices to perform some function and produce a certain effect or result." Corning v. Burden, 56 U.S. (15 How.) 252, 267 (1854). A modern definition of machine would no doubt include electronic devices which perform functions. Indeed, devices such as flip-flops and computers are referred to in computer science as sequential machines. A **claimed signal** has no physical structure, does not itself perform any useful, concrete and tangible result and, thus, does not fit within the definition of a machine. (emphasis added)

Note that the focus is on the words of the claim. In this instance, the claim language is "program product comprising a computer readable medium having embodied therein a computer program for storing data," which is clearly statutory subject matter because it has physical structure in the form of computer readable medium. It is improper for the Office to interpret the claims as including a limitation from the Specification which is not recited in the claims.

For these reasons, this application is now considered to be in condition for allowance and such action is earnestly solicited. Should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicants' Attorney at the number listed below so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

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Date

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